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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

---------------------- In the Matter of --------------------)) PUBLIC UTILITIES COMMISSION)) Instituting a Proceeding to Investigate the) Issues and Requirements Raised by, and) Contained in, Hawaii Revised Statutes) Chapter 486H, as Amended))	DOCKET NO. 05-0002

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PUBLIC UTILITIES COMMISSION

HAWAII PETROLEUM MARKETERS ASSOCIATION'S

REBUTTAL STATEMENT

and

CERTIFICATE OF SERVICE

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HAWAII PETROLEUM MARKETERS ASSOCIATION'S

REBUTTAL STATEMENT

Hawaii Petroleum Marketers Association ("HPMA"), by and through its attorneys, Cades Schutte LLP, hereby submits the attached Rebuttal Statement pursuant to the Regulatory Schedule of the Public Utilities Commission ("PUC") set forth in Order No. 21670 filed March 1, 2005.

DATED: Honolulu, Hawaii, July 11, 2005.

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HAWAII PETROLEUM MARKETERS ASSOCIATION'S

REBUTTAL STATEMENT

Hawaii Petroleum Marketers Association ("HPMA") appreciates this opportunity to rebut certain of the statements and omissions in the Position Statements of the other parties to this Docket No. 05-0002.

I. Division of Consumer Advocacy

The Division of Consumer Advocacy ("DCA")'s Statement of Position contains a number of statements that HPMA respectfully disagrees with, including the following:

A. Inventory Carrying Costs. At page 20 of the DCA's Statement of Position, the DCA recommends that the import parity price calculation should include an inventory carrying cost based on an additional 3-week supply 'held on water' and estimates this to be approximately 0.35 cpg based on today's market. HPMA asserts that DCA's proposed inventory carrying costs, at 0.35 cpg, is too low.

The DCA adopted ICF's calculations of the inventory carrying costs found in ICF's response to CA-IR4. ICF used a LIBOR rate of 4% which is too low because they failed to add a "margin" to the LIBOR rate. The LIBOR rate is typically the rate of interest at which banks offer to lend money to one another in the wholesale money markets. However, lenders then add a certain number of percentage points, called a margin, to the index to establish the interest rate companies borrowing money must pay. ICF failed to do this.

The DCA only considered a carrying cost for 3 weeks on the water and failed to account for the additional inventory carrying costs on land. The refiners typically have a 20-day crude oil inventory and another 20-day finished product inventory. Thus, instead of 3 weeks of inventory carrying costs, the carrying costs should reflect both water *and* land carrying costs which last approximately 9 weeks. To account for both "on water" and "on land" carrying costs the adjustment should be 1.5 cpg (factoring in a borrowing rate of LIBOR plus 2%) rather than the 0.35 cpg recommended by the DCA.

B. Elimination of Certain Margin Caps. On pages 21 and 22 of the DCA's Statement of Position, the DCA recommends eliminating the margin cap for the bulk and unbranded classes of trade. HPMA agrees with the elimination of the unbranded rack class of trade due to its inapplicability to the Hawaii market but disagrees with the DCA's recommendation to eliminate the bulk margin cap because the margin adjustments should reflect the actual marketplace, which includes bulk.

C. Marketing Margin. On pages 22 and 23 of the DCA's Statement of Position, the DCA recommends a rolling-average mainland margin to address the real-time issue and avoid prices set at caps that are double the previous year's average in the selected Mainland benchmark markets. However, the DCA's recommendation fails to correct for the basic flaw in ICF's data and methodology, which, even doubling the rolling-average approach, still does not incorporate the necessary flexibility required by marketers to ensure that they are not irreparably damaged by margins which can be capped at or below their operating costs and expenses. Rather, HPMA's recommended tripling of the mainland average margin approach corrects for the ICF's errors in methodology and should be adopted by the PUC as a part of the gas price cap mechanism.

As time passes and all parties become familiar with the impacts and application of the pricing mechanism and the various components of the mechanism have been clearly defined and properly incorporated into the gas pricing cap formula, then the PUC can make the necessary adjustments to fine tune the process. This avoids the irreparable economic harm that will occur if the PUC underestimates the cap and tries to make adjustments after refiners and marketers have left the industry and/or supply has been jeopardized.

D. Implementation and Adjustments. On pages 24 and 25 of the DCA's Statement of Position, the DCA recommends that the PUC gather information pertaining to possible reasonable adjustments and that any adjustments for land values and rent caps can be done at a later time after implementation.

It is imperative that adjustments for land values, rent caps, and any other obvious differences associated with the Hawaii marketplace, be incorporated into the gas cap formula before implementation. HPMA's recommended 10 cpg approach is to account for these additional cost impacts that have been recognized as valid.

For example, compliance with divorcement laws, lower volumes and other particular Hawaii-specific market characteristics were completely ignored by the DCA in its Statement of Position but should be accounted for in the PUC's final numbers. It is patently unfair to recognize that an adjustment is necessary, yet take the position that nothing be done until more data is gathered. HPMA's recommended approach avoids such problems and incorporates the needed flexibility into the gas cap pricing mechanism and avoids irreparable economic harm if the PUC underestimates the numbers after refiners and marketers have left the industry and/or supply has been jeopardized.

On a similar note, although the DCA recognized the compounding issue of ethanol compliance on pages 17 and 18 of its Statement of Position, the DCA failed to make a recommendation to the PUC as to how best to address the costs that will be imposed on the industry. HPMA recommends that the PUC adopt HPMA's recommendation that the additional costs be accounted for and included in the numbers once industry participants begin incurring capital improvement costs to comply with this mandate.

It should be noted by the PUC that HPMA's recommendations for adjustments are primarily meant to cover costs not considered by ICF and to prevent economic harm to jobbers. However, HPMA cautions that if some of the recommendations it has made are adopted and not others, it could make matters worse for the jobber industry as a whole (e.g., if the PUC adopted HPMA's recommended rack margin adjustment and ICF's recommended DTW margin adjustment).

E. Compliance. On pages 25 and 26 of the DCA's Statement of Position, the DCA outlines the ICF-recommended highly complex internet-based database system that will be the repository of wholesale gasoline transactional information. Recognizing the difficulties with implementing such a novel and complex system and the alleged shortcomings of a default compliance system, the DCA recommends that the PUC complete a cost/benefit analysis of the ICF proposed transactional database versus a default customer complaint process.

HPMA recommends that until the PUC is able to identify and implement the appropriate reporting system for this new regulatory scheme, the PUC should refrain from implementing any gas cap rules at all.

F. Uncertain Risks. HPMA disagrees with the DCA's comments on page 26 of its Statement of Position that "risks are just risks and are not certain to happen." The generality of this statement downplays the impending impact of what will happen to the market if the caps are implemented as recommended by ICF. These risks are real and are certain to happen as the experts have all warned and outlined in the Position Statements of the other parties. The only uncertainty is the degree to which these risks will cause supply disruptions, shortages, and result in product exports. If any of these anticipated risks becomes reality, the consequences will be disastrous.

II. Chevron

A. Class of Trade Distinction. Chevron's Statement of Position contains the conclusion that ICF's proposed bulk, rack and DTW price cap margin regulations have no basis in the Gas Cap legislation and is otherwise not necessary or desirable for the wholesale industry. HPMA strongly disagrees with this conclusion.

Chevron's recommendation to eliminate such margin adjustments for all classes of trade would leave the marketing members of HPMA without any assurance whatsoever that they would have sufficient margins available to them under the caps to continue operating their businesses. Rather, HPMA supports the margin adjustments ICF recommends for all classes of trade, except unbranded rack as stated above, to reflect the actual marketplace.

B. Security of Supply. The positions of Chevron and Tesoro clearly set forth a persuasive position regarding the necessity for Hawaii to have a secure source of supply. Because they are often non-branded, spot purchasers, HPMA members would be immediately and severely impacted by any shortage of supply suffered by the refiners of Hawaii.

III. Shell.

Legislative Task Force. Shell's statement of position regarding the mandatory legislative task force is persuasive and lends substantial support for its subsequent recommendation that the PUC should recommend to the Governor that she should exercise her emergency power authority to suspend, in whole or in part, the gas cap law or any rules adopted thereunder. The legislative task force would have provided an essential data gathering tool to assist in filling the obvious gaps in ICF's pricing gap mechanism. Due process requires that such a task force be formed to address the outstanding issues that the law recognized must be addressed before any type of gas cap mandate can be implemented.

IV. Conclusion

Wherefore, HPMA respectfully requests that (1) its recommendations, as set forth in its Position Statement, filed on July 1, 2005, be adopted, (2) that inventory carrying costs be initially established at 1.5 cpg to account for both on water and land carrying costs (and including a customary LIBOR margin), (3) the bulk class of trade be retained, (4) the mainland margin averages be tripled to correct for methodology errors, (5) land value, rent cap and TCA adjustments be incorporated into the formula before implementation, and (6) any gas cap that is implemented must have the necessary safeguards in place such that such implementation does not negatively impact the availability of supply to the Hawaii market.

Respectfully submitted,

Hawaii Petroleum Marketers Association

By: ______________________
Robert Fung
Its President

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2005, I served copies of the foregoing, together with this Certificate of Service, either by United States mail, postage prepaid, or by hand-delivery to the following:

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